Ontario. Legislative Assembly

Standing Committee on the Legislative Assembly

Debates

M-1

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Legislative Assembly
of Ontario

Second Session, 36th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 36e législature

Official Report of Debates (Hansard)

Wednesday 6 May 1998

Journal des débats (Hansard)

Mercredi 6 mai 1998

Standing committee on the Legislative Assembly

Organization

Comité permanent de l'Assemblée législative

Organisation

Chair: Joseph N. Tascona
Clerk: Peter Sibenik

Président : Joseph N. Tascona
Greffier : Peter Sibenik

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 6 May 1998

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Mercredi 6 mai 1998

The committee met at 1532 in room 228.

ELECTION OF CHAIR

Clerk of the Committee (Mr Peter Sibenik): Honourable members, it is my duty to call upon you to elect a Chair from among your number. Are there any nominations?

Mr Gary Fox (Prince Edward-Lennox-South Hastings): I nominate Joe Tascona as Chair of the committee.

Clerk of the Committee: Mr Tascona is nominated. Are there any further nominations? In that event, seeing that there are no further nominations, I declare Mr Tascona elected Chair of the standing committee on the Legislative Assembly.

ELECTION OF VICE-CHAIR

The Chair (Mr Joseph N. Tascona): Honourable members, it's my duty to call upon you to elect a Vice-Chair. Are there any nominations?

Mr Morley Kells (Etobicoke-Lakeshore): I would like to nominate Gary Fox as Vice-Chair.

The Chair: Are there any further nominations? There being no further nominations, I declare the nominations closed and Gary Fox is duly elected Vice-Chair of the committee.

APPOINTMENT OF SUBCOMMITTEE

The Chair: The next order of business is that we need to strike a subcommittee on committee business.

Ms Shelley Martel (Sudbury East): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Tascona, Ms Mushinski, Mr Morin and Mr Pouliot; and that any subcommittee member may designate a substitute member on the subcommittee who is of the same recognized party and who is a member of the committee.

The Chair: Any discussion? All those in favour? The motion is passed.

Is there any further business? If not, we'll adjourn the meeting to the next date to be scheduled.

The committee adjourned at 1535.

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Mercredi 4 novembre 1998

Standing committee on the Legislative Assembly

Integrity Commissioner and Lobbyists Statute Law Amendment Act, 1998

Comité permanent de l'Assemblée législative

Loi de 1998 concernant le commissaire à l'intégrité et les lobbyistes

Chair: Joseph N. Tascona
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Mercredi 4 novembre 1998

The committee met at 1538 in room 228.

INTEGRITY COMMISSIONER AND LOBBYISTS STATUTE LAW AMENDMENT ACT, 1998

LOI DE 1998 CONCERNANT LE COMMISSAIRE À L'INTÉGRITÉ ET LES LOBBYISTES

Consideration of Bill 69, An Act to amend the Members' Integrity Act, 1994 and to enact the Lobbyists Registration Act, 1998 / Projet de loi 69, Loi modifiant la Loi de 1994 sur l'intégrité des députés et édictant la Loi de 1998 sur l'enregistrement des lobbyistes.

The Chair (Mr Joseph N. Tascona): We're here to commence the meeting for consideration of Bill 69. Is there a motion to adopt the report of the subcommittee on committee business, dated Tuesday, October 27, 1998?

Mr Ernie Hardeman (Oxford): So moved.

Mr Bill Grimmett (Muskoka-Georgian Bay): Chair, we have an amendment we'd like to move on the subcommittee report. I understand that at the House leaders' recent meeting, they felt that the date of November 18 for the next meeting might be inappropriate for the members, since it was constituency week. I'm suggesting that we could amend the subcommittee report to indicate that the next meeting for clause-by-clause would be on Wednesday, November 25.

The Chair: That's in the report of the subcommittee; it's paragraph 2. The change would be from November 18 to November 25, 1998.

Mr Grimmett: That will give us a month to still do our Christmas shopping.

The Chair: That's not in the amendment.

Is there a motion to adopt that? Discussion?

Mr Grimmett: That's my motion to amend the report.

The Chair: Is there any discussion on that? All those in favour? The amendment to the report is carried.

We have a vote on the amended report. All those in favour? The report, as amended, is carried.

SPEAKER OF THE LEGISLATIVE ASSEMBLY

The Chair: We have three presenters today. Our first presenter is the Honourable Christopher M. Stockwell, MPP, Speaker of the Legislative Assembly of Ontario. He has a written submission; I imagine everybody has that. Thank you for coming.

Hon Chris Stockwell (Speaker): Thanks for having me. I appreciate the opportunity to address such an august group as the committee on the Legislative Assembly.

Mr David Ramsay (Timiskaming): It's not august; it's November.

Hon Mr Stockwell: That worked in Timiskaming, didn't it?

Let me say at the outset that my reason for appearing today has nothing to do with the basic principles of the bill. I would decline to comment on the bill because of the nature of my position. I'm here to discuss only one section of the bill, that is, section 1 and its potential impact on the Integrity Commissioner, who is very clearly an officer of the Legislative Assembly.

As you know, the Integrity Commissioner is appointed on an address of the assembly. In layman's terms, an address of the assembly means he's appointed within the House on a vote. The appointment of the Integrity Commissioner has to date been made by agreement from all sides of the House. I think that's another important thing. If we're going to have somebody as our Integrity Commissioner who's going to review these kinds of things, it's very important that they receive support from all sides of the House.

To understand wholly the non-political intent of this piece of legislation, one has only to review the debate — and I think it's important that we review that debate when we're looking at this piece of legislation — of the conflict-of-interest legislation that was passed in 1988 and when it became the Members' Integrity Act in 1994. I look about the room and I know Mr Ramsay was here during that debate, as well as Mr Lessard. It was an apolitical debate. Discussion was basically on, how better can we frame this bill for all members on all sides of the House?

Section 1 of Bill 69 allows the Integrity Commissioner to undertake any activities assigned to him by Management Board of Cabinet. This, in my opinion, is a very dangerous and difficult piece of the legislation. In my view, this compromises the non-partisan nature of the position and indeed the trust of the commissioner. By reading this part of the legislation, I think you could argue that the bill has the potential to put the Integrity Commissioner himself, ultimately the person who measures the

integrity of the members, in a conflict of interest, which is ironic at best and dangerous at worst.

Section 1 of the bill would mean that the Integrity Commissioner not only would take direction from the House but would himself also become an employee of the government. Let's think about that: He would take direction from the House but also be an employee of the government. In the non-partisanship of this particular piece of legislation, we can understand.

But let's think of it this way: Imagine that the Leader of the Opposition or the leader of the third party is in having his interview with the Integrity Commissioner one day at 2 o'clock. They're working through the most private and personal financial dealings and concerns of him, his wife and his children. In the middle of that meeting, the Integrity Commissioner gets a phone call. It's the Chair of Management Board, and he says: "Mr Integrity Commissioner, I need you here right now. There's an emergency." Of course it's completely hypothetical, but the Integrity Commissioner may get up and say, "I'll be back in 20 minutes," go over to Queen's Park and meet with Management Board Chair. The Chair of Management Board may say, "I need you to investigate X, Y and Z," and on the way out he may say, "I also want to tell you we've given you a raise." Now you have the Integrity Commissioner, who has the most private and personal information of all members on all sides of the House, put in a situation of responding, reacting and reporting to a partisan member of the executive council who reports to the Premier of the province of Ontario. To me, that reeks of conflict of interest.

Any member of the House, regardless of position, and independent or aligned, should have the right to refuse to disclose private financial information to an employee of the government. I think that's a fundamental principle and right of society. I believe personally that if an employee of the government came to me and demanded personal, private information about me and my spouse and my children, I should have the right to refuse. Under this piece of legislation, I don't. I must provide that information if I'm to take my seat in the Legislature, cognizant that the person taking the information is an employee of the government, paid by the government, directed by the government. "Inherent conflict" is an understatement, in my opinion.

The activities assigned to the Integrity Commissioner under section 1 are unspecified and the results of any activities are never reported to the House. How is that going to work? Can this Integrity Commissioner, who walks around with information in his head — let me be clear. It's no aspersion on the integrity commissioners. Judge Evans and Judge Rutherford are two of the most honourable men I have ever known in my life. It has nothing to do with them; it's the principle of the bill. The activities assigned are unspecified and may never be reported. We could have the Chair of Management Board direct the Integrity Commissioner to carry out an investigation of who knows whom, who knows when, of who knows what, and they never, ever have to make that report public or bring it before the House. I think that's dangerous. Privileged and confidential information about one and all is in that man's head. He may now be directed by a partisan, political person — and there's nothing wrong with being a partisan, political person — to do investigations at will, with no guarantee that those investigations will ever see the public light of day.

I submit to the committee that this will put the commissioner in an untenable position, particularly if he receives conflicting direction. I make the point, what if the House tells him to do one thing and the Chair of Management Board tells him to do another? Who is his master? They both pay his bills. They both have legislation that says he must do as they say. Who does the Integrity Commissioner respond to and who does the Integrity Commissioner seek out in a case of a conflict of interest?

I ask you to imagine the unease you might feel if the role of the Provincial Auditor were changed in a way that — and I'm not commenting on the Provincial Auditor's dalliance in the public forum these days. But what if, in any way, he were to receive an assignment from and report directly to the government of the day? How would this committee feel about that, let alone the government members? We all know that government members may one day be government members and the next day be opposition members and vice versa. Two examples are sitting here today. How would we feel if a piece of legislation drafted by the government, read into the House and brought out to committee and adopted by the Legislature said that the Provincial Auditor will now take direction and be paid a portion of funds by the government? Who wouldn't agree that his impartiality is compromised? I think you'd have to be very troubled as an individual not to agree that certainly impartiality is being compromised.

The potential intrusion on this legislative officer's independence should be a concern to every member, and I urge the committee to consider its implications carefully. I urge the members to consider it carefully.

I want to tell you something. There's a reason commissioners are commissioners. There's a reason they report to the Legislative Assembly. There's a reason they have no affiliation to party nor government, because they represent all of us collectively as an assembly. There is no first among equals in this assembly. We are all sent here by the good people of Ontario, and we must maintain with certainty that each officer who reports to this assembly is only beholden to the assembly, the collective will of the legislators themselves.

I can see a remedy for this situation. I would recommend that the remedy be an amendment to section 1 which would cause the Integrity Commissioner to receive direction from the House on the activities that Management Board Secretariat has in mind. In my opinion, this would eliminate any conflict the commissioner would continue to have, because he'd still be directed by a single body. In addition, this would ensure that the process for both conflict-of-interest investigations involving public servants and for lobbyist registration are at arm's length.

1550

Let me say clearly that I think there's a problem here for the government. The government sets up this specific board as arm's-length. This person is arm's-length, this board is arm's-length, this committee is arm's-length, because we as a government don't want to be seen to be influencing this process. But how could you not be influencing a process when you direct and pay the person who administers the process? If it's arm's-length, it the shortest arm in Ontario. This is a claim that may be difficult to make in a process where the government gives direction and receives reports from a person who is supposed to be arm's-length.

In closing, this is not partisan at all. This is my effort to ensure the sanctity of the Legislative Assembly and their commissioners. It's my effort to say to you members today that it is important that we carry out the business of this Legislature, but more important, not only that, it is important that we continue to strive for impartial Legislative Assembly staff. We have impartial Legislative Assembly staff in the Clerk's department and throughout this building. We are taking a huge and dangerous step in compromising one of the most important commissioners of this Legislature if we adopt this report.

I've enclosed a couple of other packages. I would ask you to read them. I want to thank you again for your time and attention to my comments. Any questions? I will be here for the questions. I'm not sure I used all the time.

The Chair: Thanks very much, Mr Speaker. You haven't used all your time. If you want to use more time, you're certainly free to use more time.

Hon Mr Stockwell: No, go ahead.

The Chair: Fifteen minutes was used up. I'd like to get some questions because it's an important issue. I'd like to get maybe five minutes from each party, if they wish, just to explore the issue. We'll start with the Liberal Party, the opposition, and then the NDP and then the governing party.

Mr Ramsay: Speaker, thank you very much for coming and giving great emphasis to a very important point about the impartiality of the servants of the Legislature. I agree with you entirely that it's very important that all those who serve the Legislative Assembly not only keep their independence but be perceived as being independent. We have embarked upon processes just recently, in the hiring of other servants of the Legislature, trying to keep this independent and having members of the Legislature involved directly rather than have government officials do that. I think what you're saying is consistent with this direction we've embarked upon as a Legislative Assembly and I think it's right. I would hope this committee will give due consideration to your recommendation.

Hon Mr Stockwell: I will note that we've made a couple of hirings of commissioners in the past while, and each hiring was totally agreed to by all parties. I think that's a very important part of the process. There's no point in hiring commissioners if you don't have all-party agreement. I think there's a fly in the ointment at that point because one party feels put upon by the commissioner. I think if this were the person and this were the job description at the time of hiring, you may have had a far, far more difficult time in getting all-party agreement.

Mr Ramsay: It's interesting, because I remember when there was tremendous excitement around this place when the government thought that in order to replace Judge Evans they would transfer a bureaucrat to the position. Again, even though this person was a bureaucrat to serve the government of the day, the point was made very strongly then that all these positions of the Legislative Assembly have to be independent of both the government and the bureaucracy of the government, to be totally independent, and I think your suggestion would serve that purpose.

Mr Wayne Lessard (Windsor-Riverside): I take your point about the hiring of commissioners being with the agreement of all three parties very seriously, because that was an experience that I went through on the appointment of the Environmental Commissioner. The thought of actually interviewing and hiring somebody with a committee made up of 11 people seemed a little bit unwieldy to me and I thought it was doomed to failure when we started out. However, I was quite pleased that at the end of the day it was a process that we were successful with. We were able to finally come to all-party consensus as to the choice that we ultimately made.

I can't say it was an easy process, but I think it's essential that we do have that consensus when we are appointing commissioners who are going to be reporting to the Legislature and who undertake very important public services. The auditor is a good example. They need to be in a position where they can make those judgment calls and report to the Legislature and report to the public without there being any appearance whatsoever of any partiality on their part and any sense that there is any direction that's being provided to them in the undertaking of those responsibilities. I don't know if that causes you to have any comments.

Mr Stockwell: It does fit the methodology because the Environmental Commissioner — I think the actual striking of the legislation was contentious. I think there was not all-party agreement on actually moving legislation to create this position. I think that was a fair comment at the time. I know my caucus, at the time, was opposed.

Having said that, once the legislation was adopted, there was a new spirit of co-operation when it came to hiring. I think all people in the Legislature understand the need to find a person who is equitable and fair for all sides. I think the point is well taken. You can argue on the basic fundamentals of a bill, but you need to know that the person you're hiring is in fact going to carry out and fulfill that role.

Mr Lessard: The suggestion that you make with respect to an amendment of the bill, I'm wondering what you think the impact of that may be.

Hon Mr Stockwell: I think it'll be marginal, at best. I think it will do two very important things. One, it will not allow the Chair of Management Board to give direction to the commissioner, so there's no relationship there. Where

conflict of interest is always getting into trouble is when there's a relationship that, at some point, people consider improper, not that there is an impropriety, but there's a perception of impropriety. I think if you've got a conflict of interest commissioner who meets with and takes direction and accepts payment from a minister of the cabinet, there's a potential for conflict. There's impropriety.

Taking that away means that he would report, as anyone else would be reported upon, into the House itself. The House would direct — and the government has full control of the House, we know that — the commissioner to investigate whomever they choose to investigate in full public light and the report would be laid on the table like any other report a commissioner files. In essence, it would resolve the concern in two simple steps: There would be no direct access to Management Board or the executive council, and the reporting structure would put it through the House or the Legislative Assembly, like the auditor, the Environmental Commissioner, the Election Finances Act, the Integrity Commissioner and a host of others.

Mr Lessard: You don't think that would affect the ability of the commissioner to do the job for which I think the government has put this provision in the legislation to address?

Hon Mr Stockwell: Let me be clear: I think it would enhance his ability to do the job at arm's length and benefit both the government and the opposition. If it's truly an arm's-length person we are all looking for, then this would enhance his arm's-length relationship and would provide a far better buffer for the government should they need a report on a government employee, far better buffer because no one can claim tampering. You can't tamper with somebody you have no direction of, nor do you ever meet with. To me, it's tremendously sensible. Of course, I did write it.

Mr Grimmett: Thank you, Mr Speaker, for attending today and providing your views on section 1 of Bill 69. I think it's useful for the purpose of this committee to restate for the record the section that I believe the Speaker has concerns about. Subsection 1(1) of the bill reads:

"The Members' Integrity Act, 1994 is amended by adding the following section:

"23.1(1) The commissioner may exercise the powers and shall perform the duties assigned to him or her under this act."

That's referring, of course, to the Members' Integrity Act.

"(2) The commissioner may agree to undertake such other activities as the Management Board of Cabinet may request."

1600

It is not, in my opinion, an issue of being assigned duties by the Management Board of Cabinet but being asked to consider taking on those duties. At the time of the appointment of Mr Justice Robert Rutherford to the post of Integrity Commissioner, Mr Bud Wildman, the member for Algoma, a member of the NDP caucus, indicated that — and this is by way of background to the issue of additional duties that the commissioner might take on — and I quote from Hansard: "There must be some process in place for ensuring that senior members of the civil service who might leave their employ here can ensure that there are proper protections to prevent conflicts of interest. We support the suggestion that these changes will proceed and Mr Justice Rutherford will play this role."

It's my understanding that at that time what Mr Wildman was speaking of was that there was all-party agreement when Mr Rutherford was hired that, in addition to the already legislated duties the commissioner had, he would take on additional duties. It's my understanding that at that time there was a discussion about the need to properly provide the commissioner with legislated authority to take on those duties. That's my understanding of the reason this section was added to the bill: to allow the commissioner, if he felt it was appropriate, to take on additional duties.

I thought, in listening to the Speaker's comments, that it was interesting that he referred to the auditor, because in section 17 of the Audit Act the auditor actually can be assigned duties directly by ministers of the crown. I'll read that section; it isn't very long.

"The auditor shall perform such special assignments as may be required by the assembly, the standing public accounts committee of the assembly, by resolution of the committee, or by a minister of the crown in right of Ontario but such special assignments shall not take precedence over the other duties of the auditor under this act and the auditor may decline an assignment by a minister of the crown that, in the opinion of the auditor, might conflict with the other duties of the auditor."

I think it's important that the members of the committee be assured that the government certainly will consider the comments made by the Speaker today very seriously. It's possible that we'll have further discussions about them.

Hon Mr Stockwell: Just two quick comments on the issue that was brought forward by the member for Muskoka-Georgian Bay. With respect to the permissive part of the legislation — it's "may" — the reason we have this legislation before us today is because the conflict-of-interest commissioner, the Integrity Commissioner, is in possession of an opinion that said he would be in a conflict of interest under the present legislation. If he did in fact carry out this work that was suggested by the government he would be in a clear conflict of interest, and he shouldn't do it.

If the legislation is permissive and it's "may" and not "shall," then my argument would be that he would still be in a conflict of interest, because if he had a decision as to "may" or "shall," "may" gives him an option. Then I would argue you're going to have the same legal opinion given by the same lawyer, that you are in a conflict of interest, because the inherent bill is conflicting. You can't serve two masters, case closed. That's a conflict.

As far as playing the role is concerned, he can still play the role and still do the things that need to be done, but it's, how does he report? No one is ever suggesting that Mr Wildman wasn't right when he said we need this for the Legislature, or Mr Sterling or Mr Bradley. Mr

Rutherford can do this job, folks. There's no doubt he can do it. He should do it. I think he's a bright man and he's capable of doing it. All I'm saying to you is, just have him report to the assembly. Don't report to the government.

I agree with my friend Mr Grimmett. He can play that role — not a problem — but the very important fact is, when he plays that role, who does he report to? If he reports to the government and he's got all this information about everybody in the Assembly, then he's serving two masters, which in my opinion — I'm not sure everybody wants to know that the guy who you disclose all your private, confidential financial information to, reports indirectly to the Premier of the province of Ontario.

Thank you, I appreciate your time.

The Chair: Sorry, we have another question.

Mr Grimmett: I just wondered about the date of the legal opinion and whether it was based on Bill 69.

Hon Mr Stockwell: No, it was on the old act because, as I said, if it was permissive to this point and it's still permissive, my opinion is that — I don't want to say my opinion. What I expect is here is that if he has a decision to make, "shall" or "may," the argument could be made that he still has a conflict of interest. I still think it could be made.

Mr Grimmett: Could you table the opinion for the use of the committee?

Hon Mr Stockwell: I would be happy to.

Mrs Helen Johns (Huron): I was just wondering if you could ever imagine where something might come to the Integrity Commissioner that might be so sensitive that the Legislature would be best not to know the information.

Hon Mr Stockwell: Oh, absolutely.

Mrs Johns: So how do you propose that all of this information coming before the Legislature would be — that an individual could be protected, for example, if they need protection?

Hon Mr Stockwell: To draw a line under what I'm trying to point out, he has all kinds of sensitive information about all of us that it's best the Legislature not know, obviously. I guess the discretionary point of view here is that if you have someone who is accepting our conflict-of-interest statements, our financial dealings, it's all well and good as long as he reports to the Speaker through to the House, because it's a non-partisan process he's reporting through. Where I think I want to draw the line is, if he has this important financial information about you and he reports to the Speaker and the Chair of Management Board and the executive council, that's a danger; and more important, if he has it about him. It think there's partisanship involved because you're all partisan. I guess the important point that needs to be made is, he has information now but he doesn't report to anyone but the House. Under this legislation he will begin to report to the Chair of Management Board, the executive council and the Premier of Ontario. The information I give him is in that man's head when he reports to those people. I have a disquieting feeling in the pit of my stomach.

The Chair: Okay, that's all the time we have.

Mr Speaker, when are you going to table that letter? Do you have it with you?

Hon Mr Stockwell: I will table it in 20 minutes or sooner.

The Chair: Thanks very much.

Hon Mr Stockwell: I appreciate your time.

GOVERNMENT RELATIONS INSTITUTE OF CANADA

The Chair: Our next presenter is the Government Relations Institute of Canada, David B. Miller, president. Does everyone have his written presentation? Great. Thank you for joining us. You have 20 minutes.

Mr David Miller: My name's David Miller and I'm president of the Government Relations Institute of Canada. Our association is made up of approximately 90 individual members. Our members are government relations practitioners, lobbyists, both in-house — working for associations and private corporations — and also consultant lobbyists. Among our membership, we represent virtually all of the major government relations firms who currently practise in Ottawa. Many of our members individually also do work at Queen's Park; others through their companies have offices in Toronto and elsewhere and do carry out work in Ontario. At the moment there is no equivalent of our association in Ontario, or any other province for that matter, but it is our intention and our hope that we will be able to develop chapters in a number of provinces. In fact, we hope this legislation will be a catalyst to enable us to do that.

Our institute, we believe, played a positive role in assisting the federal government, Parliament and the registrar in developing the federal act and its supporting regulations and code of conduct. We would very much like to be equally supportive and co-operative in regard to this legislation.

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It's our view that the federal legislation has been a success, that it has gone a long way to removing some of the mystery and misconceptions that have traditionally surrounded what we do. Therefore we very much, in principle, support this legislation.

We do believe, however, that there are some specific aspects of the legislation which can be improved. I'd like to run through a number of areas where we have some concerns and which we think are worth a second look on your part.

First, there is not a preamble to this bill. Your bill in most ways mirrors the federal legislation; this is one place where it does not. While preambles do not have a great deal of force in law, they can be useful, or even quite important, in capturing the basic principles and essential rationale for a particular piece of legislation.

In this case, we think it's particularly important that the preamble to the bill reaffirm what the minister and the government said when this bill was introduced, which is stated in the federal preamble, that being that lobbying is a legitimate part of the democratic process and that the

purpose of the legislation is not to inhibit it but rather to ensure it is carried out with honesty and transparency.

Second, in regard to a code of conduct, again unlike the federal act, the bill makes no provision for the development of a supporting code of conduct for lobbyists operating under the act. Our association has developed its own code of conduct which we've attached for your information. Many of our member companies, particularly the larger companies, have their own codes of conduct. We, as members of GRIC, worked closely with the Ethics Counsellor in the federal government to develop the federal government code of conduct. Like a preamble, a code may not have full force of law, but we believe it can be a useful as a supporting document to the bill in setting forth accepted and expected standards of conduct. We would encourage you to consider the possibility of creating a specific code of conduct for the industry under the auspices of this legislation.

Our third concern is with regard to conflict of interest. One specific provision of the legislation which concerns us is subsection 17(3), which establishes as an offence punishable by a fine of up to $25,000, any action by a lobbyist which "knowingly places the public office-holder in a position of a real or potential conflict of interest."

We are uncertain what potential problem this section, which has no parallel in the federal statute, seeks to address, but we would note is that there is already adequate provision in the Criminal Code against any attempt by anyone to bribe or seek to bring undue influence upon a public office-holder.

"Conflict of interest" is not defined in the bill and the reference to not only "real" but also "potential" conflict wraps these provisions, in our view, in dangerous ambiguity. We would prefer the section be deleted entirely, but at the least we would ask that the bill be amended to include a definition of "conflict of interest" and that any infraction be restricted to real, not potential, conflicts.

With regard to registration provisions, we note that subsection 4(1) requires a consultant lobbyist to register a relevant undertaking within 10 days of its commencement; subsection 4(5) provides for all changes to that original filing to be registered within 30 days; and subsection 4(7) provides a similar 30-day filing period for notifying of the termination of any undertaking.

Given these requirements, and since I believe neither the government nor our members are interested in needless paperwork, we don't believe it should be necessary, as proposed in subsection 4(6), that undertakings be confirmed on an annual basis. If we register when they start, re-register when they change and inform the government when they are terminated, does that not of itself ensure that the status of any undertaking is apparent at any time and such annual filings are therefore in a real sense needless duplication?

As we read the bill, it would appear that section 17 treats failure to deregister within 30 days as an offence equal in severity to failing to register or filing false or misleading information. We're not certain that the public interest is as seriously threatened by tardiness in deregistering, and we ask that you reconsider whether it should be treated as an equally severe offence under the act.

With regard to the potential for mandatory review, the federal act provided for a mandatory review of the legislation, and experience under it, by a parliamentary committee after five years of operation. We believe that such sunset provisions are useful, particularly in regard to legislation such as this, and we recommend that you consider adding such a review clause to the bill. Of course the first review of the federal legislation has already taken place and, I believe, served a useful purpose in examining how the bill had operated and where there were opportunities for improvement.

We offer these comments and suggestions in the belief that a small number of changes will make this legislation more equitable and effective. We certainly support the thrust of the bill and offer to the members the full cooperation of our membership in its implementation.

I'd be prepared to take any questions.

The Chair: We have about three minutes each for questions. We'll start with Mr Lessard.

Mr Lessard: Three minutes is hardly enough time, but I'll try. Thank you for your presentation. I wonder whether you could table with the committee a list of the members of your organization, if you haven't done that already.

I have a question with respect to the provision about conflict of interest. You make a suggestion initially —

The Chair: Mr Lessard, you asked him to table something. Are you going to table that, sir?

Mr Miller: I'm not in a position to table it today, but I certainly have no objection to providing our membership list.

The Chair: What exactly are you going to give the committee?

Mr Miller: I would present a list of the names of our current members.

The Chair: That's what you want, Mr Lessard?

Mr Lessard: I'm wondering if you're using the government's time or my time by clarifying that.

The Chair: I'm the Chairman. Mr Lessard, I want the committee to get the documentation you're asking for and I want to make sure I understand it. What's going to be tabled is a document related to a list of the membership. Mr Lessard has asked for that and that's what we're going to get. Continue.

Mr Lessard: You've asked that the provision with respect to conflict of interest be taken out in one section, or at least the provision "knowingly places the public office-holder in a position of a real or potential conflict of interest." Is the removal of the words "conflict of interest" a fallback position? First of all, you want subsection 17(3) deleted and, if it's not deleted, to have the words "conflict of interest" removed.

Mr Miller: We believe that any potential situations of this sort are already dealt with in the Criminal Code. Therefore we feel that this clause is not necessary in this bill. However, if you feel that the clause should remain in the bill, we would like to see a definition of the words

"conflict of interest," which doesn't currently exist. We would prefer that it refer only to real as opposed to potential conflict of interest. I think it's very difficult to define or expect people to recognize where a potential conflict of interest may exist.

Mr Lessard: Isn't it required in the federal legislation for there to be annual filings?

Mr Miller: No. In the federal legislation there is a requirement for filing, a requirement for an amendment to that filing whenever there is any change in the circumstance in terms of what areas you're dealing with, or any of the other provisions of the act. Then there is ultimately a requirement for deregistration when you're no longer acting on behalf of the client. In effect there is not an annual requirement for reregistering.

Mr Lessard: Do they require notification of deregistration in the federal legislation as well?

Mr Miller: That's right.

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Mr Grimmett: Thank you for attending today, Mr Miller. I have a question about the concern you raised in point number 3, conflict of interest, and also your point number 2, code of conduct. I'm glad that Mr Lessard asked the question about the fallback position, because I was wondering that myself.

You indicate that you would support a code of conduct. In the federal code they have a provision about conflict of interest. Are you saying that if it was a code of conduct it's OK to have conflict of interest in there. But when there is real meat and real penalty involved, as we have in our proposed section, you don't want it in there?

Mr Miller: No. We believe that conflict is dealt with very clearly in the Criminal Code at this time. We believe there are very clear-cut provisions if someone uses undue influence with an elected representative. So we don't think there is a need for it to be repeated here.

While we certainly don't have a problem with the question of conflict of interest in the code, I believe you may be referring to conflict of interest in terms of representation of clients. Is that —

Mr Grimmett: Section 8 in the federal code says, "Lobbyists shall not place public office-holders in a conflict of interest by proposing of undertaking any action that would constitute an improper influence on a public officeholder." What we have done in this legislation, rather than have a code of conduct with no penalties, as is the case federally, is put in a tough section regarding conflict of interest with some tough penalties as well. Is that the reason you object to it?

Mr Miller: No, it's not. There are already Criminal Code provisions, which obviously are much more serious than just a fine. We think that is already clearly dealt with.

The Chair: Any other questions? Mr Ramsay?

Mr Ramsay: I have no questions.

Mr Lessard: I have a question for the parliamentary assistant. The deponent asks what potential problem subsection 17(3) is there to address, and I wonder if the parliamentary assistant can give us an answer to that question, and if not today, at some later point.

Mr Grimmett: Certainly. I think I've already addressed it, with respect, and that is, what we're dealing with here is regulating the activities of lobbyists and putting an emphasis on them to avoid creating a conflict of interest for a public office-holder. I think that is what the federal government probably was trying to do with its code of conduct. In this draft legislation we have chosen to set up a situation where we have a penalty section with the conflict-of-interest issue.

The Chair: Thanks very much for your presentation.

GOVERNMENT POLICY CONSULTANTS CANADA

The Chair: The next presenter is Government Policy Consultants Canada. I believe we have James Crossland, president, and Bob Carman, vice-chair. Thanks very much for attending the hearings today.

Mr James Crossland: Mr Chairman, distinguished members of the committee, my name is James Crossland. I'm president and chief operating office of GPC Canada, and with me is Mr Robert Carman, who is vice-chairman of GPC. Before joining GPC several years ago, you may know that Mr Carman had a very distinguished 30-year career in the Ontario public service. He was deputy minister in several departments and was ultimately secretary to cabinet.

GPC is the country's leading government and public relations consulting firm. We were founded in 1986, and we have offices across Canada in Victoria, Vancouver, Edmonton, Calgary, Ottawa, Montreal, Quebec City and of course a large office here in Toronto. In addition, our sister company, GPC Europe, has offices in London, Brussels and Edinburgh, and a network of partners throughout Europe. Our staff complement totals over 400 in Canada and Europe. I'm frankly very grateful for the opportunity to appear before you today to offer you our thoughts about this legislation and a few recommended amendments.

I've given the clerk a longer version of my speaking notes, which I think you all have and, in the interest of time, I'm not going to read those notes as they are presented to you. There's additional detail in those notes, which should answer any questions you may have.

At the outset I wish to say categorically that we at GPC Canada strongly support legislation to govern the relationship between lobbyists and public office-holders. We believe that lobbying public office-holders is a legitimate activity in a democratic society, that free and open access to government is an important matter of public interest and that efforts to influence government policy must be transparent to public office-holders and the public generally.

GPC has had its own code of conduct for over 10 years, and from the outset our firm has been unwavering in its commitment to professionalism and ethical conduct in dealing with public office-holders and clients. We've built our company by attracting the leading professionals in the fields of public and government affairs. These people not only have unrivalled expertise and substantive knowledge

of public policy; they've also worked hard to earn reputations for honesty and trustworthiness. Therefore, upholding these values is a requirement for us to succeed in our business. Given this context, we are naturally interested in ensuring a regulatory legislative framework governing the relationship between lobbyists and public office-holders that encourages transparency and openness.

It is for this reason, among others, that we're very supportive of Bill C-69 — correction, Bill 69; that's my federal bias coming out — although we believe there should be a few minor amendments. I'd like to review those very briefly for you.

First, we recommend that the bill include a short preamble that recognizes lobbying as an important part of the democratic process and emphasizes the values of transparency and openness. This is part of the federal act and was also recognized by the Ontario government when it announced the legislation on October 6. To this end, we simply recommend that the existing federal preamble be implemented in the provincial bill.

Second, while we support the definition of "lobby" contained in the bill, we recommend that subclause 1(1)(b)(ii) be amended to clarify that a consultant lobbyist need only register if he or she arranges a meeting between a public office-holder and any other person if the purpose of the meeting is to lobby the government. There may be other reasons to arrange meetings, and we don't feel it's necessary to register unless the purpose of the meeting is to lobby the government. As currently drafted, the bill would require registration even if that is not the purpose.

Third, the sections of the bill dealing with registration of lobbyists are similar to the federal legislation, and to that extent we support them. However, the requirement in subsection 4(6) that lobbyists confirm a return within two months after the expiry of the first and each subsequent year from the date of filing is clearly unnecessary. If a lobbyist abides by subsections 4(1), (5) and (7), then there is clearly no need to confirm a return as required in subsection (6).

Under the bill as currently drafted, the government will be required not only to monitor registrations, changes to registrations and deregistrations, all of which are required at the federal level, but it will also be required to monitor confirmations of registrations. As a result of these considerations, we recommend that subsection 4(6) be removed from the bill.

Fourth, we have concerns about one specific aspect of the wording in section 17. Subsections (1) and (2) of that section are almost identical to the federal bill, and to that extent we support them. However, subsection 17(3), which prohibits lobbyists from knowingly placing a public office-holder in a position of a real or potential conflict of interest, while an admirable objective, raises several important questions. For example, how is a conflict of interest defined? It's not defined anywhere in the bill. Why does the section refer to a potential conflict? Are not all of us, including civil servants and politicians, in situations of potential conflict every day of our professional lives?

In short, the intent of this section is not clear to us, and for this reason we believe it should either be withdrawn from the bill or, preferably, clarified. Clarification should include, at the very least, a detailed and precise definition of the term "conflict of interest". In addition, the word "potential", which could be open to capricious application, should be removed from the section.

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I would also like to address one additional point in relation to those sections of the bill dealing with offences and punishment. I agree that lobbyists should be punished for not filing a return, or for providing false or misleading information. However, I do not think that a failure to deregister a client as a result of an administrative oversight or error should be treated in the same manner. The public clearly has an interest in knowing who is lobbying whom about what, but surely the public interest does not suffer in any way if a lobbyist neglects to deregister a client within the prescribed 30-day time period.

Consequently, I believe that failure to deregister should be treated as a far less serious offence than either not registering in the first place or providing the registrar with false or misleading information. If that is the case, surely the punishment for not deregistering should reflect this.

One final matter: The federal act includes a provision in which it shall be referred to a Senate or House of Commons committee, or both, after four years to "review the administration and operation" of the act. This makes good sense, in our opinion, and we would recommend that Bill 69 include a similar provision.

That concludes my remarks. I would like to ask my colleague Bob Carman to make a few additional remarks.

Mr Bob Carman: On the matter of conflict of interest, we believe that the rules of conduct for public servants that are contained in regulation 435/97 provide a very useful guide as to the kind of detail we would be looking for under this section 17 concern that we raised earlier regarding conflicts of interest. In that particular document, it's crystal clear what is meant by a perceived or a potential conflict of interest. The wording clearly indicates that the public servant is going to receive some type of beneficial interest from the transaction. We feel that particular regulation provides a model for the type of specifics we feel are needed.

We also feel that the word "potential," as Jim mentioned earlier, does have problems, because we see that any of the actions that are anticipated by a lobbyist in terms of influencing of a public servant would be a real conflict of interest. There isn't any potential about it; it's real. We think it's useful to be specific on that point.

I think it's also worth mentioning that there is a wide variety of firms engaged in government relations and public affairs. GPC Canada has made a policy of ensuring that its clients are armed to do their own relations with government. Our approach is to contact public servants to get information on matters under review so that we can provide them with strategic advice. We believe that the client is the best advocate. Our contact with government in the sense of lobbying is probably far less than it is with

many other firms. I think one of the things that will have to be realized is that despite the size of GPC Canada, we may not register very often because we do not lobby directly. That's certainly been our experience at the federal level.

We are concerned about the question of integrity. We're very concerned about the question of integrity because, I mentioned earlier, we ask public servants for information. If we do not have an absolutely trustworthy relationship with people in government, we are denied that information. We are very concerned about ensuring that the intent of this bill is implemented as the government wishes. Thank you very much.

Mr Crossland: We'd be happy to answer any questions you might have about our remarks.

The Chair: We'll start with the government side. Each side will have three minutes.

Mr Grimmett: Welcome, Mr Crossland and Mr Carman. I just want to make a couple of comments on some points that you've raised. Earlier on in your presentation you mentioned the issue of the meetings that public office-holders have. We adopted the same wording as in section 5(1)(b) of the federal lobbyist legislation. We have looked very closely at the experience in other jurisdictions, particularly the federal lobbyist experience, because they are the only jurisdiction in Canada right now that has lobbyist registration and regulation legislation. From what we've learned about their experience with that section, our government was comfortable with having that included in the bill.

On the issue of subsection 4(6), which you raised, where we propose to keep an up-to-date registry, we feel from our observation of how other systems are working, or perhaps need to be improved, that this would improve the registry and keep it up to date. It might well be useful to the lobbyists themselves to monitor what their activities are on a year-to-year basis so that they can keep the government informed on just where they are with a particular lobbying issue.

I wanted to ask either one of you, on the issue of conflict of interest, because you've raised similar points to the previous presenter — you indicate in your written submission that you support the federal code of conduct, that kind of approach. In item 8 it has a conflict-of-interest section. It's not backed up by penalties, as our draft section would be. I just wondered, if you accept it in a code of conduct, why do you object to it when it has a penalty provision added to it?

Mr Crossland: From our perspective, the federal code of conduct contains general principles. Of course, we support the principle of not placing public office-holders in a situation of conflict. The reason the federal legislation does not contain that general provision is because it would be difficult to enforce and the penalties of breaching the federal legislation are quite serious, including potential imprisonment. I believe that's why they placed that section in the code of conduct.

We support the principle of it, but if it's going to be in a statutory form, which it is not in the federal case and which it proposes to be Bill 69, all we're asking is that it be clarified and fully explained. I don't think there is any serious professional in our business who would disagree with what you're trying to accomplish here, but it's a very broad term. As Mr Carman pointed out, there are some specific examples that we feel very comfortable with implementing in the statutory form. I would add that we feel very uncomfortable that the word "potential" could be interpreted in many different ways and would be capable of capricious application in the bill. We prefer to see that word taken out.

We're not opposed to the whole issue of conflict of interest being dealt with. All we're saying is, define it and we'll be very supportive. In fact, we'd argue that it should be defined very broadly, but precisely. We'll support that.

Mr Ramsay: Thank you, Mr Crossland. Bob Carman, nice to see you again.

I would like to follow up on that line of questioning and give Mr Grimmett a chance to answer that. Don't you feel it would be better to tighten up and define what potential conflict is? This could have extremely broad application and it might make everyone involved in this quite wary as to what it might mean and might actually tend to maybe disentangle people from getting information, wondering what this would possibly entail. As this brief says, aren't we always, probably every day in our lives, in a potential conflict of interest? I suppose that is the case, but most of us don't get into the conflict and recognize the potential. Don't you feel we should be defining that or tightening that up in the legislation, protecting everybody?

Mr Grimmett: I think one of the dangers in listing, if you will, the situations that could exist to create a potential or real conflict of interest, is that you would possibly take the risk of narrowing the circumstances in which conflict of interest might arise. One of the objects of the legislation is to keep this very broad because clearly we want people engaged in this kind of activity to exercise great caution. We believe the public wants the regulation of this kind of activity to be very thorough and we believe the public wants the penalties to be such that people engaging in this activity will do it in a very transparent manner.

The comments that have been made today have been very helpful. It's certainly helpful to hear from the people in the industry who have had experience in other jurisdictions. I particularly found the comments about the code of conduct of public servants at the federal level quite useful.

Mr Lessard: Thanks for your presentation. I know that we're all supposed to be deemed to know the law, but I have to admit that I'm not quite familiar with all the provisions of regulation 437/97. I wonder if you could elaborate just exactly what is in those regulations.

Mr Carman: Chair, is that your wish? It's a long regulation.

Mr Lessard: You did mention it.

The Chair: We have three minutes and Mr Lessard can use the time as he wishes.

Mr Carman: Let me deal just with section 10, which I think is pretty clear about what the public servant has to

do in a situation such as this, and this is if they have some kind of a beneficial interest in the contact that's been made.

"A public servant shall notify his or her designated official if circumstances could arise in which the public servant's private interests could conflict with his or her duties to the crown.

"Without limiting the generality of subsection (1), the public servant shall notify the designated official of the existence of circumstances in which the public servant could benefit from a decision by the crown that she or he is able to influence in the course of his or her duties to the crown."

It goes on that if they're a member of a group they have to exempt themselves from a group.

It's very clear. This Ontario regulation is under the Public Service Act and it is included in the Manual of Administration. I would say that all public servants at the director level and above are very much aware of this particular regulation, and they're schooled in the behaviour that is consistent with the regulation. It's a way of life in the Ontario public service, but it is detailed here. I referred to it because it is an extremely good reference point when one is looking at this broader definition of conflict of interest that Mr Grimmett referred to.

Mr Lessard: Thank you.

Mrs Johns: Mr Chair, I was wondering, because there was no time to ask a question, if this group could submit something in writing to us. I'm interested in section 2.1 on page 4 of your report. It talks about people coming together with a public office-holder and they wouldn't be there for the purpose of lobbying the government. I don't know why someone would come to me as a parliamentary assistant or to a minister if they weren't coming for the purpose of lobbying. I was wondering if you could submit in writing, because I can't really ask this question, why people might have that opportunity, and how the individual person who sits there who's my constituent would know that it wasn't a lobbying event and would feel protected by that?

The Chair: Do you understand the request?

Mr Crossland: I understand the first component clearly. It's really a short answer, and that is that there are situations in which clients of ours will meet with public office-holders to obtain information as opposed to advocate, to clarify how a policy would be applied and so forth. I understand this isn't the wording of the federal legislation, but we still felt that it was probably unnecessary if you're not going to actually lobby the government. If you are going to arrange a meeting for the purposes of lobbying the government, then by all means that should be registerable and transparent. There are probably other examples but that's the one that comes quickest to mind.

The Chair: Do you care to respond in writing or is that sufficient, Mrs Johns?

Mr Crossland: On the second issue about your constituent —

Mrs Johns: I could ask the question after. I don't know if anybody else is interested. Part of the reason for this is that we want to be above a level of reproach from our constituents. We want our constituents to know when we're meeting with people and why we're meeting. I happen to work in energy, so you can imagine the lobbying that's going on there right now. I don't understand why — you would know better than me, Mr Lessard — it matters if people are lobbying or not.

The Chair: Mrs Johns, we've gone over time now and I want to be fair to everybody. If you're looking for something in writing and they're agreeable to do that, can you just be specific and ask what you would wish? What would you want? We'll see if they're willing to provide it.

Mr Crossland: Would you like me to meet with you afterwards?

Mrs Johns: I want to know what you mean by "purpose of a meeting" in the first case. Second, I want to know how, by deciding on this lobbying versus non-lobbying issue, the constituents in Huron county are better off?

The Chair: Can you respond to that?

Mr Crossland: I will provide a written response.

The Chair: That's to the clerk of the committee.

Mr Crossland: Okay.

The Chair: We appreciate that.

Mr Lessard: You may have to go to Huron county.

The Chair: Thanks very much for your time.

At this point the meeting is adjourned until Wednesday, November 25.

The committee is adjourned at 1645.

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Vice-Chair / Vice-Président
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Mr Bill Grimmett (Muskoka-Georgian Bay / Muskoka-Baie-Georgienne PC)
Mr Wayne Lessard (Windsor-Riverside ND)
Mr David Ramsay (Timiskaming L)

Also taking part / Autres participants et participantes
Mr Ernie Hardeman (Oxford PC)

Clerk / Greffier
Mr Douglas Arnott

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Mr David Pond, research officer, Legislative Research Service